

Service Date: March 17, 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	DOCKET NO. T-9158
Burlington Northern Railroad)	
Company to discontinue its agency)	ORDER NO. 5833
operations at Dutton, Montana.)	

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Attorney at Law, Regional Counsel
Office, Burlington Northern Railroad Company, 1201 Norwest
Center, Billings, Montana 59101

FOR THE COMMISSION:

Tim Baker, Staff Attorney, 2701 Prospect Avenue, Helena,
Montana
59620

BEFORE:

Clyde Jarvis, Commissioner & Hearing Examiner

BACKGROUND

1. Burlington Northern Railroad Company (BNRC) filed an
application with the Montana Public Service Commission
(Commission) on December 7, 1987, seeking authority to

discontinue its agency at Dutton, Montana. BNRC further requested authority to sell, remove or otherwise dispose of the depot building at Dutton, Montana.

2. The Commission properly noticed Burlington Northern's application and a public hearing was held February 2, 1988, at the Dutton Public High School, Dutton, Montana.

3. At the conclusion of the hearing, the parties stipulated that the hearing examiner could issue a final order.

SUMMARY OF TESTIMONY

Testimony of Applicant

4. Mr. Izzy Conaway, BNRC Manager of Station Services, testified on behalf of BNRC concerning both current station operations and station agent duties at the subject agency. Mr. Conaway testified that while the Dutton agency is now staffed, the centralized billing is handled out of Great Falls, Montana.

Mr Conaway noted that waybill production and accounting had been transferred to Great Falls in 1983 and 1985, respectively.

He stated that he and other BNRC personnel had contacted all of the shippers in the Dutton area, and had found no opposition to the requested closure.

5. Mr. Chuck Keeler, BNRC Train Master/Road Foreman in the Great Falls area, testified in support of the application. Mr. Keeler stated that the proposed closure will not affect the

frequency of train service at Dutton, or the assigned blind sidings of Vaughn, Power, Collins, Exxon Yard, Brady, and Cordova.

6. Mr. William T. Allbright, BNRC Senior Analyst for Cost and Statistics, appeared and testified in support of the application. Mr. Allbright sponsored applicant's Exhibit A: "Accounting Exhibits for Proposal to Discontinue Base Agency Service at Dutton, Montana".

7. Exhibit A establishes that the following number of cars were forwarded and received at Dutton and the assigned blind sidings:

1984	865
1985	465
1986	706
1987	633

8. Exhibit A contained the following net revenue (loss) as determined by the Belt/Carter and BNRC formulas:

	Belt/Carter	BN
1984	\$400,935	\$43,676
1985	\$141,568	(\$28,990)
1986	\$115,605	(\$18,104)
1987	\$136,387	(\$11,399)

9. Mr. Allbright also indicated that the motivating factor for this application was BNRC's desire to increase employee productivity. Exhibit A also contained the result of a time in motion study conducted by Applicant to analyze the amount of "productive time" attributable to duties performed by the the Dutton agent in handling of all carload traffic during 1987. Based on specified averages for performing specific tasks, BNRC calculated that its Dutton agent was productive 18% of his paid time. Mr. Allbright did not know what the average productivity

(as defined by BNRC) is for comparable station agents in Montana, or systemwide.

Testimony of Protestants:

10. Mr. James Mular, Legislative Director of the Transportation Communications Union (TCU), testified in opposition to the proposed consolidation. Mr. Mular requested that the Commission apply the provisions of Section 69-14-1001 M.C.A., regarding railroad employee protection. In addition, Mr. Mular requested that the affected employee be allowed to join the present proceeding before the Commission concerning the provision on employee protection in connection with the closure of the shop facilities located at Livingston, Montana. Mr. Mular also testified as to his discussions with BNRC personnel during the 1987 legislature regarding the amendment and subsequent application of 69-14-202, MCA. Mr. Mular stated that BNRC indicated that it would not seek the closure of any station where the agent was within two years of retirement, in order to avoid both the bumping of junior employees and the upheaval of the agent's life. In return for this promise, the TCU, as well as other unions, did not oppose the amendment of 69-14-202, MCA.

11. Mr. Joe Brand of the United Transportation Union and Mr. Carl Knutson of the Brotherhood of Maintenance of Way appeared and offered testimony which was consistent with the statements of Mr. Mular concerning the representations made by BNRC during

the last legislative session concerning the application of 69-14-202, MCA.

Testimony of Agent:

12. Mr. Richard J. Ewert, BNRC agent at Dutton, appeared and testified under a subpoena issued by the Public Service Commission. Mr. Ewert stated that he has accepted a by-out of his remaining time by the BNRC if the Commission grants this application.

DISCUSSION, ANALYSIS AND FINDINGS

13. The Commission must judge BNRC's application in terms of "public convenience and necessity". This is not a formulaic standard, but rather must be determined from the facts of each case; the existing burdens on the railroad will be weighed against the burdens that will be placed on shippers should the application be granted.

14. In the instant application it must be noted that no shippers or receivers of freight in Dutton or the assigned sidings appeared at the hearing to offer testimony.

15. Because of the lack of shipper testimony, the Commission need not analyze BNRC's exhibit concerning productivity or profit/loss for the Dutton agency.

16. Since the agent in question has made arrangements for job protection which are agreeable to all parties, the request of Mr. Mular that the agent be included in the Livingston lawsuit

on employee protection need not be considered.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Montana Code Annotated, Title 69, Chapter 14.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to Montana Code Annotated Title 2, Chapter 4.

3. No set rule can be used to determine whether or not the public convenience and necessity require a given service to be performed. The facts in each case must be separately considered and from those facts the question is to be determined. See Chicago, M. St.P. and P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953), cert. denied 346 U.S. 823.

4. Public Convenience and Necessity permit the closure of the agency at Dutton, Montana, and removal of the depot.

5. The Commission encourages Burlington Northern Railroad Company, prior to the disposal of the Dutton, Montana, depot building, to first determine whether the building is of historical significance and take appropriate action to preserve such buildings, and secondly, to allow local governments in the affected area the first opportunity to utilize the building. The Commission also requests Burlington Northern Railroad Company to inform it in writing when and how the building was

disposed.

ORDER

NOW THEREFORE, IT IS ORDERED that Burlington Northern Railroad Company's application in Docket T-9158 to close the agency and remove the depot at Dutton, Montana is hereby granted.

IT IS FURTHER ORDERED THAT Burlington Northern shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED pursuant to stipulation by all parties that this be a Final Order.

IT IS FURTHER ORDERED that this Order be effective immediately and that a full, true and correct copy of this Order be mailed forthwith to the Applicant and all parties of record.

DONE AND DATED this 14th day of March, 1988 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Commissioner

JOHN B. DRISCOLL, Commissioner

DANNY OBERG, Commissioner

TOM MONAHAN, Commissioner

ATTEST:

Carol A. Frasier
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.